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2 UNITED STATES DISTRICT COURT  
3 DISTRICT OF NEVADA

4 Steven Raymond, et al.,

5 Plaintiffs

6 v.

7 Zach Conine, in his official capacity as Nevada  
8 Secretary of State, et al.,

9 Defendants

Case No. 2:23-cv-01195-CDS-MDC

**Order Granting in Part and Denying in Part  
Defendants' Motion to Dismiss the Second  
Amended Complaint**

[ECF No. 48]

10  
11 This is a putative class action pursuant to 42 U.S.C. § 1983 seeking declaratory,  
12 permanent injunctive, and related relief. Plaintiffs Steven and Kyong “Gina” Raymond and Chase  
13 Hyon challenge the constitutionality of Nevada’s Uniform Unclaimed Property Act (“NUUPA”)  
14 under the Takings Clause of the Fifth Amendment and the Due Process Clause of the Fourteenth  
15 Amendment. Plaintiffs allege that they, as putative class members, had their property seized  
16 without notice, generally mishandled, and, at times, sold by the defendants. As a result, the  
17 plaintiffs request numerous forms of relief, including, but not limited to, prospective and  
18 declaratory relief to stop what they allege are widespread constitutional violations caused by  
19 NUUPA.

20 Defendants Zach Conine, Nevada’s State Treasurer and administrator of Nevada’s  
21 unclaimed property program, Danielle Anthony, Deputy Treasurer of Unclaimed Property, and  
22 Nevada’s State Treasurer’s Office move to dismiss the second amended complaint (SAC),  
23 arguing that the claims are barred by sovereign immunity; that the SAC “broad[ly] attack[s] . . .  
24 the constitutionality of NUUPA,” which, if successful, would unravel the state’s entire claims  
25 process and impact approximately \$1 billion currently held by the State; that the plaintiffs fail to  
26 state a claim upon which relief can be granted because neither a taking nor a due process

violation occurred; and that the defendants are entitled to qualified immunity. *See generally* ECF No. 48.<sup>1</sup> Plaintiffs oppose the motion. *See* Opp'n, ECF No. 52. Therein, they argue that this court has jurisdiction over this action because they are only seeking prospective and injunctive relief, that their claims are exempted from sovereign immunity, that they have demonstrated the NUUPA results in due process and takings clause violations, and that qualified immunity is wholly inapplicable here. *See id.* at 21. Also pending before the court is plaintiffs' motion for leave to file supplemental authority. Mot., ECF No. 57. Defendants oppose the motion. Opp'n, ECF No. 59. For the reasons set forth herein, I grant in part and deny in part the defendants' motion to dismiss the second amended complaint. Further, because the Ninth Circuit has issued a binding decision on the issue of standing, I deny the plaintiffs' motion to file supplemental authority as it is only persuasive.

#### **I. Legal standard**

The court incorporates the legal standard set forth in resolving the first motion to dismiss here. *See* Order, ECF No. 42 at 2–4.

#### **II. Summary of allegations<sup>2</sup>**

In their second amended complaint,<sup>3</sup> the plaintiffs challenge the constitutionality of NUUPA, arguing that the statute wrongfully seizes private property and converts it into revenue for use by the state without due process and in violation of the Takings Clause of the U.S. Constitution. *See generally* ECF No. 46. Each individual plaintiff alleges that they had property taken from them by the defendants without notice, knowledge, or consent. *Id.* at ¶¶ 11

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<sup>1</sup> Defendants previously moved to dismiss the first amended complaint. ECF No. 28. That motion was granted. Order, ECF No. 42. Thereafter, the plaintiffs timely filed a second amended complaint. SAC, ECF No. 46.

<sup>2</sup> Because at the motion to dismiss stage the court must take the allegations in the SAC as true, the court summarizes the allegations here. However, this serves as a summary only and does not serve as a findings of fact.

<sup>3</sup> Plaintiff's complaint contains unredacted personal-data identifiers about various Nevada residents. *See* ECF No. 45 at 18–12. This information is required to be redacted pursuant to Local Rule IC 6-1. Plaintiffs are ordered to redact this information and must refrain from including—or must partially redact—such identifiers in the future. Further details are provided in the conclusion of this order.

(Steven), 24 (Gina), 31 (Chase). As it relates to Steven, the SAC alleges that he located property on the NUUPA website<sup>4</sup> that he believed belonged to him, so on August 5, 2024, he filed an online claim for the property, and shortly thereafter the property was returned to him. *Id.* at ¶¶ 14–19. Steven received a check in the amount of \$174.22 from the defendants. *Id.* at ¶ 20. That property is no longer listed on the NUUPA webpage. *Id.* at ¶ 15. The SAC further alleges that Steven lost the time value of his money while it remained in the state’s possession and is subject to ongoing harm because “he continues to hold property within the state of Nevada that could be seized by the State without any pre-deprivation notice.” *See id.* at ¶¶ 21–22. The SAC states that the past deprivation makes the threat of future, unlawful seizures “not speculative.” *Id.* at ¶ 22.

Gina and Chase set forth similar allegations. Both allege they located property on the NUUPA website and on August 5, 2024 submitted online claims for that property. *Id.* at ¶¶ 25–27 (Gina), ¶¶ 31–34 (Chase). Both received the property, in the form of money, from the state and the property is no longer listed on the website. *Id.* at ¶¶ 27 (Gina), 34 (Chase). Also, like Steven, they allege that they lost the time value of the money while it remained in the state’s possession and are subject to ongoing harm because “[they] continue to hold property within the state of Nevada that could be seized by the State without any pre-deprivation notice.” *Id.* at ¶¶ 28–29 (Gina), 35–36 (Chase). The SAC states that the past deprivation makes the threat of future, unlawful seizures “not speculative.” *Id.* at ¶¶ 29 (Gina), 36 (Chase).

### III. Discussion

Two recently decided Ninth Circuit appeals cases aid resolution of this dismissal motion: *Garza v. Woods*, --- F.4th ---, 2025 WL 2435221 (9th Cir. Aug. 25, 2025), and *Mousseau v. Crum*, 2025 WL 2437230 (9th Cir. Aug. 25, 2025).<sup>5</sup> In both cases, the plaintiffs brought similar challenges to Arizona and Alaska’s Uniform Unclaimed Property Acts, respectively. *See id.* The

<sup>4</sup> *See* <https://www.nvup.gov/app/claim-search> (last accessed on August 29, 2025).

<sup>5</sup> *Mousseau* cannot be cited as precedent because the Ninth Circuit simply deferred to its *Garza* decision, *Mousseau*, 2025 WL 2437230, at \*1, so the court only cites to *Garza* herein.

1 Ninth Circuit held that the plaintiffs raised viable due process claims but that the plaintiffs'  
 2 takings claims failed as a matter of law. Applying that precedent, this court reaches the same  
 3 conclusion: the plaintiffs' due process claim survives dismissal, but their claim under the Fifth  
 4 Amendment fails as a matter of law.

5 Like both Arizona and Alaska's Uniform Unclaimed Property Acts, NUUPA sets forth  
 6 the statutory scheme for requirements for holders of property that has been deemed abandoned  
 7 with the State. As previously explained, the purpose behind NUUPA is to establish a  
 8 mechanism for rightful owners to claim their property that has been deemed abandoned.<sup>6</sup>

9 NUUPA has specific rules for: (1) taking custody of property that is presumed  
 10 abandoned (NRS 120A.530);<sup>7</sup> (2) reporting abandoned property;<sup>8</sup> and (3) the process for filing a  
 11 claim on property that has been deemed abandoned or transferred to the NUUPA's  
 12 Administrator. Nev. Rev. Stat. § 120A.640. NUUPA also sets forth notice requirements. *See* Nev.  
 13 Rev. Stat. § 120A.580(1) (setting publication requirements depending on the size of the county  
 14 where the abandoned property has been paid or delivered). There is no statute of limitations for  
 15 claiming abandoned property. *See* Nev. Rev. Stat. § 120A.590(2).

16 Defendants again move to dismiss this action in its entirety arguing sovereign immunity  
 17 bars the action and that the *Burford* abstention doctrine applies here warranting dismissal. *See*  
 18 *generally* ECF No. 48. They further argue that this action should be dismissed because this court  
 19 either lacks subject matter jurisdiction (or should decline to exercise any jurisdiction pursuant  
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21 <sup>6</sup> NRS 120A.113 specifically defines "property." It include, but is not limited to: (1) all income from or  
 22 increments to the property, (2) money, virtual currency or interest, or a payroll card, dividend, check,  
 23 draft or deposit; (3) a credit balance, customer's overpayment, stored-value card, security deposit, refund,  
 24 credit memorandum, unpaid wage, unused ticket for which the issuer has an obligation to provide a  
 25 refund, mineral proceeds or unidentified remittance; (4) a security; (5) a bond, debenture, note or other  
 26 evidence of indebtedness; (6) money deposited to redeem a security, make a distribution or pay a  
 dividend; (7) an amount due and payable under the terms of an annuity or insurance policy; and (8) an  
 amount distributable from a trust or custodial fund established under a plan to provide health, welfare,  
 pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings,  
 supplemental unemployment insurance or similar benefits.

<sup>7</sup> *See* Nev. Rev. Stat. § 120A.530 (rules for taking custody of property).

<sup>8</sup> *See* Nev. Rev. Stat. § 120A.560 (setting forth how one reports abandoned property).

1 to Fed. R. Civ. P. 12(b)(1)), the plaintiffs lack standing, the plaintiffs have failed to state a claim  
 2 upon which relief can be granted, and because the individual defendant are entitled to qualified  
 3 immunity. *Id.* Plaintiffs oppose the motion, arguing this court indeed has jurisdiction, noting  
 4 that the SAC only seeks prospective relief, that this action is exempt from sovereign immunity,  
 5 that none of the abstention doctrines relied upon by the defendants apply here, that the SAC  
 6 properly sets forth claims upon which relief can be granted, and finally, that qualified immunity  
 7 is inapplicable here. *See generally* ECF No. 52.

8 Because this court must determine whether jurisdiction exists before analyzing the  
 9 merits of the plaintiffs' claims, *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006), I again begin  
 10 resolution of the defendants' request to dismiss this action by addressing their jurisdictional  
 11 challenges to this action.

12 **A. This court has jurisdiction over this action.**

13 ***1. Sovereign immunity***

14 Defendants' argument that this action is barred by sovereign immunity is foreclosed by  
 15 *Garza*. Here, like in *Garza*, the plaintiffs' allegations are related to the state possessing their  
 16 property, their request to return that money, and the alleged unconstitutional acts that led to  
 17 their property being seized, are sufficient to survive a motion to dismiss. *See Garza*, 2025 WL  
 18 2435221, at \*5. In *Garza*, the court first explained, "when officials acting on behalf of the  
 19 sovereign hold others' property, a suit seeking return of the property is not barred by sovereign  
 20 immunity when the plaintiff alleges 'the taking of the property or the injury to it was not the  
 21 action of the sovereign because [it was] unconstitutional or beyond the officer's statutory  
 22 powers.'" *Id.* (quoting *Larson v. Domestic & Foreign Com. Corp.*, 337 U.S. 682, 698 (1949)). It then  
 23 applied *Taylor v. Westly (Taylor I)* and held that sovereign immunity did not apply where the  
 24 plaintiffs' alleged that the defendants possessed their property, they sought its return, and that  
 25 "unconstitutional acts [that] led to its seizure" *Id.* (citing 402 F.3d 924, 926, 930–35 (9th Cir.

2005). Accordingly, as the facts in this case are quite similar to those in *Garza*, the defendants' motion to dismiss based on sovereign immunity is denied.

## 2. *Standing*

There is no dispute that to establish standing, a plaintiff "must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (internal citations omitted). Indeed, injury in fact is the "first and foremost of standing's three elements." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338–39 (2016) (quoting *Steel Co. v. Citizens for Better Env't*, 523 U.S. 83, 103 (1998)). Defendants argue that the plaintiffs lack standing because they fail to allege an injury in fact. ECF No. 48 at 24–26. Again, the defendants' argument is foreclosed by *Garza*, as the Ninth Circuit made clear that

[f]or purposes of standing, when someone—even the government—possesses property lawfully owned by another without the owner's consent, an invasion of the owner's legally protected interest has occurred.

*Garza*, 2025 WL 2435221, at \*3 (citing *United States v. \$133,420.00 in U.S. Currency*, 672 F.3d 629, 638 (9th Cir. 2012)) ("Article III's standing requirement is thereby satisfied because an owner or possessor of property that has been seized necessarily suffers an injury that can be redressed at least in part by the return of the seized property." (citation omitted)). Here, the plaintiffs have alleged they are the owners of the property identified in the SAC that was, as alleged, unlawfully seized by the state. Almost exactly like Arizona, Nevada defines "Owner" as "a person who has a legal or equitable interest in property subject to this chapter or the person's legal representative." Compare Nev. Rev. Stat. § 120A.100 with Ariz. Rev. Stat. § 44-301(13) ("Owner" means a person who has a legal or equitable interest in property that is subject to [the UPA].").

Thus, the plaintiffs have alleged a "concrete invasion of a legally protected interest." *Garza*, 2025 WL 2435221, at \*3. Plaintiffs also allege that the state seized their property "without notice, [ ] knowledge, or consent." ECF No. 46 at ¶¶ 11 (Raymond), 24 (Gina), 31 (Chase). "When the government assumes physical possession of another's unclaimed property, there is no

ambiguity as to its position on the status of that property. And when it does so without providing due process or just compensation, the owner has suffered sufficient injury to confer standing to challenge the government's action." *Garza*, 2025 WL 2435221, at \*4; *see also Van v. LLR, Inc.*, 962 F.3d 1160, 1162–63 (9th Cir. 2020) ("[W]e hold that the temporary loss of use of one's money constitutes an injury in fact for purposes of Article III."). Plaintiffs have therefore established standing here, and the defendants' motion to dismiss for lack of thereof is denied.<sup>9</sup>

### 3. Burford *abstention is inappropriate here.*

Defendants also ask that I dismiss this action pursuant to the *Burford* abstention doctrine. *Burford* abstention "is concerned with protecting complex state administrative processes from undue federal interference." *New Orleans Pub. Serv., Inc. v. Council of New Orleans (NOPSI)*, 491 U.S. 350, 362 (1989). The Supreme Court held that "[w]here timely and adequate state court review is available," district courts sitting in equity should abstain from

interfer[ing] with the proceedings or orders of state administrative agencies" under two conditions: '(1) when there are 'difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar'; or (2) where the 'exercise of federal review . . . would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.'

*NOPSI*, 491 U.S. at 361 (quoting *Colo. River Water Conversation Dist. v. United States*, 424 U.S. 800, 814 (1976)). As explained in *Quackenbush v. Allstate Ins. Co.*, the decision to decline to exercise jurisdiction pursuant to an abstention doctrine is an equitable one that "balances the strong federal interest in having certain classes of cases, and certain federal rights, adjudicated in federal court, against the State's interests in maintaining "uniformity in the treatment of an 'essentially local problem,'" and retaining local control over "difficult questions of state law bearing on policy problems of substantial public import." 517 U.S. 706, 728 (1996) (citing *NOPSI*, 491 U.S. at 362 (quoting *Ala. Pub. Serv. Comm'n v. S. Ry. Co.*, 341 U.S. 341, 347 (1951)) and *Colorado*

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<sup>9</sup> Because *Garza* makes clear the plaintiffs have standing, and the defendants' additional causation and redressability arguments do not persuade me to find to the contrary, I decline to grant their motion to dismiss on those grounds.



1 *River*, 424 U.S. at 814))) (cleaned up). But that “balance only rarely favors abstention” as *Burford*  
 2 abstention represents an “extraordinary and narrow exception to the duty of the District Court  
 3 to adjudicate a controversy properly before it.” *Quackenbush*, 517 U.S. at 728 (citing *Colorado River*,  
 4 424 at 813 (quoting *County of Allegheny v. Frank Mashuda Co.*, 360 U.S. 185, 188 (1959))).

5 To determine if abstention is appropriate under *Burford* here, I am to consider if: (1) “the  
 6 state has concentrated suits involving the local issue in a particular court; (2) the federal issues  
 7 are not easily separable from the complicated state law issues with which the state court may  
 8 have special competence; and (3) [ ] federal review might disrupt state efforts to establish a  
 9 coherent policy.” *Poulos v. Caesars World, Inc.*, 379 F.3d 654, 671 (9th Cir. 2004) (quoting *Tucker v.*  
 10 *First Md. Sav. & Loan, Inc.*, 942 F.2d 1401, 1405 (9th Cir. 1991)). Taking those factors into account, I  
 11 find abstention is unwarranted here. While the state recognizes this requirement in its motion  
 12 to dismiss,<sup>10</sup> there is no information before the court that the state has “chosen to concentrate  
 13 suits challenging the administrative action in a particular court.” *Poulos*, 379 F.3d at 671. Indeed,  
 14 this court is unaware of any other action bringing this sort of challenge to NUUPA in any court.  
 15 Thus, a threshold requirement for me to exercise *Burford* abstention is not met here, so I decline  
 16 to do so. See *Burford v. Sun Oil Co.*, 319 U.S. 315, 327–34 (1943) (finding abstention should be  
 17 exercised out of “sound respect for the independence of state action” because Texas had created  
 18 a centralized system of judicial review of commission orders to address complex oil and gas  
 19 regulations).

20 **B. Defendants’ motion to dismiss for failing to state a claim is granted in part and**  
 21 **denied in part.**

22 Defendants argue that the plaintiffs fail to allege viable 42 U.S.C. § 1983 claims under the  
 23 Fifth and Fourteenth Amendment. See ECF No. 48 at 29–38. Plaintiffs aver that the SAC  
 24 properly sets forth violations of both the Fifth and Fourteenth amendments, arguing that, in its  
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26 \_\_\_\_\_  
<sup>10</sup> ECF No. 48 at 28.



current form, NUUPA permits an unlawful taking by the state and deprives them of due process for failing to provide pre-deprivation notice. ECF No. 52 at 16–21.

***1. NUUPA does not violate the Fifth Amendment’s Takings Clause.***

The Takings Clause provides that “private property” shall not ‘be taken for public use, without just compensation.’” *Phillips v. Wash. Legal Found.*, 524 U.S. 156, 164 (1998) (quoting U.S. Const. amend. V); *see also Chicago, Burlington & Quincy R.R. v. Chicago*, 166 U.S. 226, 238–39 (1897) (incorporating the Takings Clause to the States through the Fourteenth Amendment). To establish a violation of the Takings Clause, plaintiffs must demonstrate that they possess a constitutionally protected property interest, and that there has been a taking of that property. *Engquist v. Or. Dep’t of Agric.*, 478 F.3d 985, 1002 (9th Cir. 2007). Property interests deemed protected under the Fifth Amendment are creatures of common law or statute. *See Phillips*, 524 U.S. at 164; *Bd. of Regents of State Coll. v. Roth*, 408 U.S. 564, 577 (1972).

Defendants argue that the plaintiffs essentially protest the “transfer of custody [of their property] from the holder to the State,” noting that the plaintiffs made a claim for their property, and it was returned to them. ECF No. 48 at 37. They argue that “[b]y no stretch of the imagination can that [process] be deemed a ‘taking.’” *Id.* (citing *In re Folding Carton Antitrust Lit.*, 744 F.2d 1252, 1255 (7th Cir. 1984) (where statute “permits an entitled claimant to recover from the United States,” “the escheat is impermanent,” and thus there is “no unconstitutional taking.”)). Plaintiffs respond that the defendants’ enforcement of NUUPA is a “per se” taking, arguing that the Supreme Court recently held that a state commits a physical taking “when the government physically takes possession of property without acquiring title to it.” ECF No. 52 at 20 (citing *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 147 (2021)). Plaintiffs further argue that the fact that they filed a claim and received their property back does not remedy the state’s “taking” *Id.*

1 Plaintiffs' arguments are unavailing as *Garza* and other Ninth Circuit precedent makes  
 2 clear: where unclaimed property is held in trust by the state, the property has not been taken.  
 3 *Garza*, 2025 WL 2435221, at \*6 (“[W]here unclaimed property is ‘held in trust’ by the state, the  
 4 property ‘has not been taken at all.’” (quoting *Taylor I*, 402 F.3d at 926)). Consequently, the  
 5 defendants’ motion to dismiss the alleged violations of the Takings Clause is granted.

## 6 ***2. The deprivation of property may violate the Fourteenth Amendment.***

7 Defendants argue that the plaintiffs have failed to state a violation of their due process  
 8 rights under the Fourteenth Amendment, contending that the plaintiffs’ argument that they  
 9 were deprived of notice is without merit for three reasons: (1) the property at issue is  
 10 abandoned, so the plaintiffs have no protected property right in the property; (2) the transfer of  
 11 the property from the original holder to the state does not involve an “adjudicative proceeding,”  
 12 so full due process protections are not triggered; and (3) NUUPA affords sufficient notice that  
 13 the plaintiffs property has been abandoned and is being held by the state. *See* ECF No. 48 at 30–  
 14 36. Plaintiffs’ argument that they have sufficiently pled a violation of procedural due process  
 15 claim, and that the defendants’ argument that those who abandon property under applicable,  
 16 self-executing state law no longer have a right to due process protections, is unavailing. ECF No.  
 17 52 at 16–22.

18 The Fourteenth Amendment to the United States Constitution provides that “[n]o state  
 19 shall . . . deprive any person of life, liberty or property, without due process of laws.” U.S. Const.  
 20 amend. XIV. Thus, to establish a “substantive due process claim, a plaintiff must, as a threshold  
 21 matter, show a government deprivation of life, liberty, or property.” *Nunez v. City of Los Angeles*, 147  
 22 F.3d 867, 871 (9th Cir. 1998). Once that threshold requirement is met, a plaintiff must show two  
 23 elements: “(1) a protected property interest . . . and (2) a denial of adequate procedural  
 24 protections.” *Pinnacle Armor, Inc. v. United States*, 648 F.3d 708, 716 (9th Cir. 2011) (citations  
 25 omitted); *see also Portman v. County of Santa Clara*, 995 F.2d 898, 904 (9th Cir. 1993) (“A section  
 26 1983 claim based upon procedural due process . . . has three elements: (1) a liberty or property

1 interest protected by the Constitution; (2) a deprivation of the interest by the government; (3)  
2 lack of process.”).

3 The SAC alleges that the plaintiffs’ property was “seized” and thereafter they were  
4 deprived of their property by the state without notice, knowledge, or consent. *See* ECF No. 46 at  
5 ¶¶ 11 (Raymond), 24 (Gina), 31 (Chase). Defendants do not dispute the plaintiffs’ property was  
6 taken. In fact, it was returned to them utilizing the NUUPA claims process, so their property  
7 interest is established.<sup>11</sup> The court turns to whether the SAC plausibly alleges a due process  
8 violation. As explained in *Garza*, any significant taking of property by the state, including  
9 temporary or nonfinal ones, are within the purview of the Due Process Clause. *See Garza*, 2025  
10 WL 2435221, at \*7 (citing *Fuentes v. Shevin*, 407 U.S. 67, 85–86 (1972)). Defendants’ arguments  
11 that NUUPA somehow is exempted from basic due process requirements because there is no  
12 “adjudicative proceeding” is unconvincing at this stage of the litigation. Indeed, the defendants  
13 ask this court to read *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. 306 (1950) and *Texaco, Inc. v.*  
14 *Short*, 454 U.S. 516 (1982) “together” to find that the tenets of due process do not apply here. *See*  
15 ECF No. 48 at 33. But, the *Garza* court explained the Supreme Court has “suggested that [while]  
16 substituting the state for the holder [does] not deprive owners of their property, it [also] made  
17 clear that the transfer of accounts to the state remained ‘subject to the requirements of  
18 procedural due process’ and that a state “‘may compel the surrender to it of’ presumably  
19 abandoned bank accounts by a procedure satisfying constitutional requirements”). *Garza*, 2025  
20 WL 2435221, at \*8 (citing *Anderson Nat’l Bank v. Lockett*, 321 U.S. 233, 240, 241–42 (1944))  
21 (internal quotations omitted). Further, the court’s obligation is to determine if the plaintiffs

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22 <sup>11</sup> Defendants attempt to argue that the plaintiffs do not have a protected property interest because  
23 plaintiffs abandoned their property. *See* ECF No. 48 at 33–34 (“[T]hose who abandon their property  
24 under applicable, self-executing state law no longer have a right protected by the Due Process Clause. . .  
25 .”). This argument is foreclosed by *Garza*, which found that the Arizona version of the unclaimed property  
26 act “itself recognizes that owners have a property interest in presumptively abandoned property” and  
allows owners to file claims to that property for thirty-five years after it is possessed by Arizona  
Department of Revenue. *Garza*, 2025 WL 2435221, at \*7. While the timeline for the state taking  
possession of the presumptively abandoned property is different in Nevada, NUUPA’s claims process is  
similar to Arizona’s.

1 have pled facts that, when accepted as true, are sufficient to state a claim to relief that is  
2 plausible on its face, while drawing “the reasonable inference that the defendant is liable for the  
3 misconduct alleged.” *In re Fitness Holdings Int’l, Inc.*, 714 F.3d 1141, 1144 (9th Cir. 2013) (cleaned up).  
4 The court declines to “read together” two factually distinct cases<sup>12</sup> to find the plaintiffs have  
5 failed to allege a plausible due process claim. In fact, doing so would run afoul of the well-  
6 established case law requiring the court to construe the pleadings in the light most favorable to  
7 the plaintiffs. *See id.* at 1144–45. Defendants cite to no other authority that would allow this  
8 court to find the plaintiffs have not plausibly pled a substantive due process claim, so their  
9 motion to dismiss the plaintiffs’ due process claim is denied.

10 **C. Qualified immunity does not apply here.**

11 Defendants argue they are shielded from “their individual capacity damages claims” on  
12 qualified immunity grounds. ECF No. 48 at 38–40. Qualified immunity shields government  
13 officials from individual civil liability unless a plaintiff establishes that: “(1) the official violated a  
14 constitutional right; and (2) that right was clearly established at the time of the challenged  
15 conduct, such that every reasonable official would have understood that what he is doing  
16 violates that right.” *Morales v. Fry*, 873 F.3d 817, 821 (9th Cir. 2017) (simplified). Plaintiffs respond  
17 there is no basis to assert qualified immunity here as defendants are being sued in their official,  
18 not individual, capacities. ECF No. 52 at 21. Indeed, each defendant is sued in their official  
19 capacity. *See* ECF No. 46 at ¶¶ 37 (Conine), 40 (Anthony). The Ninth Circuit explicitly stated  
20 that qualified immunity is available only to officials sued in their individual capacities and not to  
21 those sued in their official capacities, so the defendants’ motion to dismiss based on qualified  
22 immunity is denied. *See Cmty. House, Inc. v. City of Boise, Idaho*, 623 F.3d 945, 965 (9th Cir. 2010); *see*  
23 *also Wright v. Beck*, 981 F.3d 719, 737 (9th Cir. 2020).

24  
25  
26 <sup>12</sup> *Mullane* addressed the constitutional sufficiency of notice to beneficiaries on judicial settlement  
accounts under New York banking laws and *Texaco* involved an escheatment statute related to mineral  
interests in Indiana.

1           **D. Leave to amend the claims is denied.**

2           Leave to amend should be freely granted when justice so requires unless it is clear the  
3 pleading cannot be cured by additional facts. Fed. R. Civ. P. 15(a); *see also Doe v. United States*, 58  
4 F.3d 494, 497 (9th Cir. 1995). Because the Ninth Circuit has squarely resolved questions of  
5 standing and jurisdiction on the claims brought by the plaintiffs in both the first and second  
6 amended complaints, further amended appears futile and is therefore denied.

7 **IV. Conclusion**

8           IT IS HEREBY ORDERED that the defendants' motion to dismiss the complaint [ECF  
9 No. 48] is **GRANTED in part and DENIED in part**. Plaintiffs' claims, allegations, and  
10 requested relief related to the allegations that the defendants violated the Fourteenth  
11 Amendment (Due Process Clause) survive dismissal. Plaintiffs' claims, allegations, and requested  
12 relief related to allegations that the defendants' violated the Fifth Amendment (Takings Clause)  
13 are dismissed with prejudice.

14           IT IS FURTHER ORDERED that the plaintiffs must file a third amended complaint that  
15 complies with this order no later than **September 16, 2025**.

16           IT IS FURTHER ORDERED that the plaintiffs are ordered to file a redacted version of  
17 their second amended complaint in compliance with LR IC 6-1 and re-file it utilizing the "Notice  
18 of Corrected Image" event no later than **September 3, 2025**.

19           IT IS FURTHER ORDERED that the plaintiffs' motion for leave to file supplemental  
20 authority [ECF No. 57] is **DENIED**.

21           Dated: August 29, 2025

22  
23             
24           Cristina D. Silva  
25           United States District Judge  
26